

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2153 of 2006****For Approval and Signature:****HONOURABLE MR. JUSTICE H.K.RATHOD**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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JUMABHAI HAIDARBHAI DIWAN - Petitioner(s)**Versus****DIVISIONAL CONTROLLER-GUJRAT STATE ROAD TRANSPORT CORPN.
- Respondent(s)****Appearance :**

MR JS BRAHMBHATT for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE H.K.RATHOD**Date : 09/03/2006****ORAL JUDGMENT**

1. Heard the learned advocate Mr.J.S. Brahmbhatt on behalf of the petitioner.

2. In the present petition, petitioner - workman has challenged the award passed by the Labour Court, Baroda in Reference No.449 of 1996 dated 22nd November 2000. The Labour Court, Baroda has

partly allowed the reference while deciding the dismissal order and granted reinstatement with continuity of service without back wages and any consequential benefits for interim period and imposed a punishment of stoppage of two increments with cumulative effect. Learned advocate Mr. Brahmhatt has admitted before this Court that in pursuance to the said award, the petitioner-workman has already reinstated in service and he is working with the Corporation. He also admitted before this Court that petition is filed after period of five years, for that, no explanation is given by the workman-petitioner in the present petition. Learned advocate Mr. Brahmhatt submitted that Labour Court has committed gross error not to appreciate the evidence laid in departmental inquiry and charges levied against the workman is not to be proved. There was no sufficient evidence against the workman, on which, the dismissal order can be passed by the Corporation. He also submitted that in departmental inquiry, the person who was traveling in the bus, a helper who has admitted that statement which was recorded by the reporter in his name, actually, it was not written by him. He has further submitted that reporter has not given any direction to the helper to give such

kind of statement and merely in blank paper, the signature was obtained by the checking staff with threat. Therefore, Mr. Brahmbhatt submitted that only on the evidence of helper itself is sufficient to prove that charge levied against the workman is not found to be proved and there is no other evidence in the inquiry which justify the dismissal. There was no explanation given by the reporter against the evidence of the helper. The workman was working since more than 21 years. At Dabhoi Stand, 10 to 20 passengers were taken and at Dabhoi Fatak, some other passengers were taken. But no information has been given by the conductor to the concerned workman. If conductor was asked to driver, then driver must have explained the circumstance. This was union rivalry which ultimately resulted in dismissal. Therefore, Mr. Brahmbhatt submitted that Labour Court has committed gross error in denying the back wages of interim period and also imposed the punishment of stoppage of two increments with cumulative effect.

3. I have considered the submission made by the learned advocate Mr. Brahmbhatt and I have perused the award challenged in the present petition. The Labour Court has discussed the merits of the

reference in paragraph 11 at page 27, internal page 16. The Labour Court has considered that legality and validity of departmental inquiry was not challenged by the workman filing the pursis by the workman before the Labour Court. The Labour Court has examined the inquiry papers and other documentary evidence produced by the respective parties. Ultimately, the Labour Court has come to the conclusion in terms page 31, last three lines that looking to all the documentary evidence and submission made by both the learned advocates, the charge levied against the workman is found to be proved. But punishment imposed by the Corporation is actually harsh because workman had completed more than 22 years service. There was no past bad record and there was no incident of corruption or dishonesty noted in the service record of the workman. The Labour Court further observed that it is true that there was financial loss caused to the Corporation because of misconduct committed by the workman and there was some inconvenience caused to the passenger also. In the light of this background, which is discussed at page 31 and 32, Labour Court had exercised the power under Section 11-A of the Industrial Disputes Act, 1947 which is quoted as under :

Section - 11(A) : Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

4. According to the power under Section 11(A), Labour Court can interfere with the punishment, if Labour Court is satisfied that punishment order which is not justified looking to the gravity of misconduct and then to pass appropriate order by directing reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case, if any, require. Therefore, in this case, Labour Court has rightly exercised the power after coming to conclusion that workman has not challenged the legality and validity of the departmental inquiry. Finding recorded by the inquiry officer is legal and valid. Charge levied against the workman is found to be proved. But only looking to the gravity of misconduct, a punishment is harsh. There was no past bad record and there was no incident of corruption or dishonesty noted in the service record of the workman during his service tenure for more than 22 years. Therefore, the Labour Court has passed the order granting reinstatement without back wages and consequential benefit of interim period and imposed the punishment of stoppage of two increments with cumulative

effect.

5. Therefore, according to my opinion, Labour Court has power to deny the back wages and also has power to impose a punishment while exercising the power under Section 11(A) of the Industrial Disputes Act and denial of back wages is also amounts to punishment as decided by Apex Court in the case of ***Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another*** reported in ***AIR 1984 SC 976***. The relevant discussion in paragraph 3 is quoted as under :

Paragraph 3 : *“Wide discretion is vested in the Tribunal under this provision and in a given case on the facts established the Tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that where an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement*

and keeping the delinquency in view could withhold payment of a part or the whole of the back wages. In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to prove misconduct and that situation High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty."

6. The petitioner workman has been reinstated in pursuance to the award and at present, he is working with the Corporation. After accepting one direction given by Labour Court in its award and not to accept the subsequent direction which are depending upon each other, meaning thereby, to accept the reinstatement and to challenge the denial of back wages, such petition is not maintainable as held by the Apex Court in **Sanat Kumar Dwivedi Vs. Dhar Jilla Sahakari Bhoomi Vikas Bank Maryadit and Others** reported in (2001)

9 SC 402. The relevant discussion in paragraph 2 and 3 are quoted as under :

Paragraph 2 : The admitted facts are that the appellant was reinstated in service by order dated 12-5-1978 with a condition that he will not get any back wages. Obviously, earlier on 8-3-1976 his services were terminated but by the aforesaid order, he was reinstated without back wages. He accepted such reinstatement without back wages by his joining report, Annexure R-4 at page 106 of the paper-book that he has joined his duty on 13-5-1978. By his own conduct, the appellant has accepted the correctness of the order of reinstatement without back wages. Under these circumstances, subsequent dispute raised by him regarding back wages was clearly not maintainable as held by this Court in *State of Punjab V. Krishan Niwas*. In view of the settled legal position, no interference is called for. The appeal is therefore, dismissed.

Paragraph 3 : It is clarified that

this order will not be treated to the resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessary meant that the continuity of service was implicit in the reinstatement. Even Conditions 1 and 2 of the order of reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given.

7. The award passed by the Labour Court in the year of 2000 which was challenged in the year 2005. For the delay, no explanation is given in the petition.

8. Therefore, considering the entire facts and circumstances and background, according to my opinion, such petition is not maintainable in law. According to my opinion, Labour Court has rightly examined the matter and rightly passed

the award. For that, Labour Court has not committed any error which requires interference by this Court while exercising the power under Article 227 of the Constitution of India. This Court cannot act as an Appellate Court. This Court cannot re-appreciated the evidence which has been appreciated by the Labour Court. This Court cannot, even, interfere in case when two views are possible. Therefore, this Court having very limited jurisdiction and there is no any error committed by the Labour Court, which requires interference by this Court under Article 227 of the Constitution of India.

9. Therefore, there is no substance in the present petition. Accordingly, present petition is dismissed.

[H.K. RATHOD, J.]

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